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Expropriation

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AUTHORITY TO TAKE AND NATURE OF THE INTEREST TAKEN

The inequities of appropriations for levee construction remain without remedy. While the legislature made a beginning in 1978 by providing for the payment of fair market value rather than merely payment of assessed value for such takings, the mandate was made contingent on funds being appropriated for such purpose at the federal, state, or local level.[1] Appropriations have not been forthcoming. The 1978 legislation was made applicable to claims pending on July 10, 1978, thus blanketing in for possible relief claims for appropriations already made by levee districts in concert with the United States Corps of Engineers.[2] In 1979, the legislature had second thoughts and repealed the retroactive application of potential reimbursement at fair market value.[3] In *Terrebonne v. South Louisiana Tidal Water Control Levee District*,[4] a court of appeals reached the interesting conclusion that while Act 314 of 1978 established substantive rights, retroactive extension of the legislation to claimants with suits pending on July 10, 1978, was merely "a procedural device concerned with application of the act itself, rather than the substantive rights granted therein."[5] Act 676 of 1979 deleting this "procedural device" was hence merely "interpretive legislation" which did not disturb vested rights.[6] This *tour de force* seems to say that one of the groups most clearly deprived, namely those against whom exercise of the servitude via appropriation was already in effect, have nonetheless been only procedurally affected and have lost nothing because they had nothing. A more propitious solution seemed ready at hand in the 1978 provision that market value would be paid only when and to the extent that funds were appropriated; arguably, no right to receive market value could be deemed vested until the funds were appropriated. Until then, just compensation was only a hope since the servitude was deemed in existence

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1. 1978 La. Acts, No. 314.
2. *Id.*
3. 1979 La. Acts, No. 676, *amending* LA. R.S. 38:281(B)(1) (1950).
4. 414 So. 2d 805 (La. App. 1st Cir. 1982).
5. *Id.* at 815.
6. *Id.* at 816.

from the time the riparian property was separated from the public domain, and exercise of the servitude, with payment of only assessed value, was held constitutional as not a taking; the payment has been characterized as a gratuity[7] rather than an attempted payment of just compensation.

During a period of subdivision flooding due to heavy rains, a police jury entered the premises of an adjoining agricultural landowner and blocked newly opened ditches from the farmlands so as to permit subsidence of flood waters in the subdivision. The action was taken to maintain "the efficiency of the drainage channels."[8] When the ditches were reopened by the landowner, the police jury sought injunctive relief and the landowner countered with the claim that enjoining him would constitute a taking of his property. The trial court, affirmed by the court of appeal,[9] nevertheless granted injunctive relief on the ground that the statute authorizing a servitude to the police jury sustained such relief where necessary for the preservation of the efficiency of a public drainage channel. The Louisiana Supreme Court, in *Terrebonne Parish Police Jury v. Matherne*,[10] found the statutory interpretation partially correct but too sweeping in its interpretation of powers granted to the local government thereunder. Mindful, perhaps, of the threat of the "petty larceny of the police power"[11] impinging upon the citizen's right to own, use, and enjoy private property, the court refused to sustain the injunction under the public drainage statute. Nonetheless, it was sustained on the ground that, under the Civil Code articles concerning public drain,[12] the agricultural landowner, as the dominant estate, was violating the rights of the subservient estates in opening ditches which concentrated the flow of water onto such estates in a more burdensome manner than was contemplated under the servitude of public drain. No property right was taken by the injunction since the landowner was merely being prevented from doing what he had no right to do.[13]

In *City of Lafayette v. Delhomme Funeral Home*,[14] the city had made a determination that certain property was necessary in order to add a left turn lane and negotiations having failed, brought an action to expropriate the property. On appeal from a judgment in favor

7. Pillow v. Board of Commissioners, 369 So. 2d 1172, 1177 (La. App. 2d Cir. 1979).
8. LA. R.S. 38:113 (1950).
9. Terrebonne Parish Police Jury v. Matherne, 394 So. 2d 1302 (La. App. 1st Cir. 1981).
10. 405 So. 2d 314 (La. 1981).
11. 1 HOLMES - LASKI LETTERS 457 (M. Howe ed. 1953).
12. LA. CIV. CODE arts. 655-656.
13. 405 So. 2d at 318-19.
14. 413 So. 2d 348 (La. App. 3d Cir. 1982).

of the city, the property owner argued that the city had not carried its burden of proving the expropriation to be necessary for the public interest. The contention was quickly disposed of under a statute granting authority to the city to expropriate "whenever such a course is determined to be necessary for the public interest";[15] the court held judicial review was precluded except as to constitutional issues. The contention was also made that the city had acted unreasonably in selecting the property for expropriation and had abused its discretion, acted in bad faith, and acted arbitrarily. The record indicated, however, that the city had acted on the basis of adequate engineering and economic data, and hence the finding of the trial court was not clearly wrong.[16]

In *Hernandez v. City of Lafayette*,[17] the city engaged in a more sophisticated kind of taking, due to disagreement between the city council and the mayor. In *Hernandez*, the property owner was admittedly entitled to rezoning of his tract as a result of public and private developments in the area; rezoning had been deferred, however, in light of a city ordinance providing for realignment of a major street so as to bisect the landowner's property. As one councilman stated, "[i]f we change zoning to another classification, we are going to have to pay more money when we create the right-of-way."[18] The owner filed suit in state court seeking a mandatory injunction to compel the city to change the zoning classification on his property. When the council voted to rezone, the mayor vetoed the rezoning. Thereafter, a settlement was negotiated by the council and an appropriate ordinance passed; the agreement and zoning were again vetoed by the mayor. The council then repealed the ordinance declaring the realignment and expropriation a "public necessity."[19] In this posture of the case, the plaintiff brought a federal civil rights action[20] alleging that the city had delayed its decision on rezoning in order to maintain a lower market value for the land which it proposed to expropriate. The federal trial court held the council and the mayor legislatively immune from such a suit, and the city was deemed immune because the damages or deprivation resulted from the city's failure to act promptly rather than from affirmative action of any kind; on appeal, the trial court was upheld as to legislative immunity for the council and the mayor, but not as to the city.[21] The appeals court agreed with the owner's contention that the refusal of the city to change his pre-

15. LA. R.S. 19:102 (Supp. 1977).
16. 413 So. 2d at 351.
17. 643 F.2d 1188 (5th Cir. 1981).
18. *Id.* at 1190.
19. *Id.* at 1191.
20. 42 U.S.C. § 1983 (Supp. III 1979).
21. 643 F.2d at 1198-99.

sent zoning classification denied him any reasonable economically viable use of his property.[22] In these circumstances, the court, noting that the legislative history of the fourteenth amendment indicated that it had been passed with the overruling of *Barron v. Mayor of Baltimore*[23] in mind, found that the Civil Rights Act properly could be used to redress a taking of private property by a state for a public use without compensation. Citing *Penn Central Transportation Co. v. New York City*[24] for the proposition that property may be taken by police power regulation such as zoning ordinances and other land use regulations, the court reversed summary judgment for the city and remanded the case to the trial court to enable the owner to pursue his claim for damages "in an amount equal to just compensation for the value of the property during the period of the 'taking.' "[25]

In *Parish of Jefferson v. Marsh Investment Corp.*,[26] the parish sought the expropriation in fee of a tract of land previously rented for sewage disposal purposes. The trial court granted only a partial servitude on the grounds that insufficient efforts had been made to purchase the property and the purchase of other property made expropriation of the instant property unnecessary. The court of appeals reversed and granted expropriation of the fee, noting that further negotiations would have been vain and useless;[27] the court noted also that the expropriating authorities had sound discretion to determine the necessity of an expropriation, and in the circumstances here, a parish plan to utilize already fouled property to avoid further environmental problems was not a bad faith exercise of the expropriating agency's discretion.[28]

In *K. G. Farms, Inc. v. State*,[29] the landowner sought to reduce an unused taking in fee for highway purposes to a taking of a ser-

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22. *Id.*

23. 32 U.S. (7 Pet.) 243 (1833) (the court denied the use of the fifth amendment to an owner in a suit against a state).

24. 438 U.S. 104, 138 n.36 (1978).

25. 643 F.2d at 1200. In United States v. City of Pittsburg, California, 661 F.2d 783 (9th Cir. 1981), the city sought to counter a federal regulation permitting postal carriers to take shortcuts across residential lawns by enacting a trespass ordinance. The United States challenged the ordinance on preemption grounds; the city countering that the ordinance merely prevented the taking of private property without just compensation. The court held that the city had no standing to raise the fifth amendment issue, and that even if it had such standing, the federal regulation taking was miniscule and did not significantly dilute or affect property rights or interests, but left property owners in full control of their property; the court held there was no taking.

26. 398 So. 2d 27 (La. App. 4th Cir. 1981).

27. *Id.* at 28.

28. *Id.*

29. 402 So. 2d 304 (La. App. 1st Cir. 1981).

vitude as to the shoulder of the proposed road.[30] The trial court was reversed in granting the reduction; a court of appeals, citing *State v. Olinkraft*,[31] found that in taking full ownership, the state's action was not arbitrary, capricious, or in bad faith, but based on sound engineering considerations.

DAMAGES AND VALUATION

Willful and wanton damage in disregard of the rights of a property owner, as was present in *Daniel v. Department of Transportation and Development*,[32] again has been found to free a trial court to adopt a damage approach which will do substantial justice. In *Pearce v. E. J. Earnest, Inc.*,[33] a contractor for the state entered premises with no color of authority and, with notice of the probable invalidity of the action, did substantial damage to the premises, including destruction of numerous ornamental trees. The state argued that the owner was estopped to claim damages since he had failed to minimize such damages by seeking injunctive relief. However, in light of a clear protest by the owner and reasonably timely resort to legal action, the court found no failure to act nor acquiescence in the appropriation of property involved.[34] The court noted that, while generally the so-called "before and after rule" would be applicable to the calculation of damages, the trial court had discretion in the case of willful damage to determine the "aesthetic value" of individual trees in order that substantial justice might be done in the case.[35] It was also held that the state alone was liable for damages awarded to the property owner in light of the state's failure to obtain the right of way from the property owners resulting in the subsequent trespass and damages incident thereto.[36]

In *State v. Bitterwolf*,[37] the Louisiana Supreme Court was presented with a *res nova* issue respecting the extent of setoff for changes in value caused by a proposed improvement for which property was taken. A statute, which became effective in 1975, implemented legislatively the new constitutional requirement that "the owner shall be compensated to the full extent of his loss."[38] The statute also car-

30. Presumably, the reduction to servitude status was sought in order to take advantage of Civil Code article 753, providing a ten year prescription on predial servitudes.

31. 350 So. 2d 865 (La. 1977).

32. 396 So. 2d 967 (La. App. 1st Cir. 1981).

33. 411 So. 2d 1276 (La. App. 3d Cir. 1982).

34. *Id.* at 1279.

35. *Id.* at 1280.

36. *Id.* at 1280-81.

37. 415 So. 2d 196 (La. 1982).

38. LA. R.S. 48:453(C) (Supp. 1974) (implementing LA. CONST. art. I, § 4).

ried forward the principle that, with respect to the award of compensation for property, such award is to be made "without considering any change in value caused by the proposed improvement for which the property is taken," and legislatively restated the "before and after rule" with respect to damages to remainders and its proviso that the measure of damages is to be applied "taking into consideration the effects of the completion of the project in the manner proposed or planned."[39] In *Bitterwolf*, the trial court had awarded in compensation and severance damages an amount exceeding the price paid by the purchaser for the entire premises, such excess being at least in part attributable to expropriation-caused depreciation subsequent to the announcement of the project but prior to the purchase of the property by the owner.[40] It was argued by the owner that he was entitled to an upward adjustment of market value as of the time of taking since the depreciation in value had been induced by the announcement of the project; the argument was rejected "[i]n view of the legislative aim to compensate each owner to the full extent of his loss," the court's inference being that "the statute implicitly applies only to changes in value which occur during an expropriatee's ownership of the property."[41] Thus, all of the expropriation-induced depreciation in value which occurred before the owner purchased the property was to be reflected in the market value measuring the compensation for the taking and damage to the remainder.[42] The court noted, however, that the record was ambiguous on whether "the depressive effect on market value attributable to the project's announcement had fully run its course before [the owner] acquired the property," and in the interest of justice, the case was remanded for trial and determination of this issue as well as the proper amount of the award and severance damages in light of the views expressed by the court.[43]

In *State v. Landeche*,[44] an appeals court had occasion to note again that severance damages cannot be presumed and that an expert opin-

39. *Id.* § 453 (A), (B). These provisions were not included in amendments to the general appropriation statute (LA. R.S. 19:9 (1950 & Supp. 1974)), nor to the statute governing expropriations by municipal corporations. LA. R.S. 19:110 (Supp. 1977)). The statutes contain only the language of Civil Code article 2633, augmented by the 1974 constitutional provision that "the owner shall be compensated to the full extent of his loss." Presumably, the same result will be reached in cases involving these statutes where there is a change in ownership after a project's announcement. In the most recent case involving a taking by a municipal corporation there was no interim sale and the issue did not arise. Town of Rayville v. Thomason, 404 So. 2d 1290 (La. App. 2d Cir. 1981).

40. 415 So. 2d at 198-99.

41. *Id.* at 202.

42. *Id.* at 203.

43. *Id.* at 204.

44. 400 So. 2d 241 (La. App. 4th Cir. 1981).

ion, without any evidence on which such opinion could be based, could not be used to establish severance damages. In this instance, the expert indicated that he "did not really put a dollar value on it," but merely considered various inconveniences stemming from the expropriation. Nonetheless, the trial court used the opinion to award damages of some $178,000; no significance was attributed by the court to other expert opinion that special benefits would result to the owners in the amount of some $120,000.[45] In light of these facts, the court of appeals reversed the holding on the ground that the owner did not carry the burden of proving severance damages with legal certainty and by a preponderance of the evidence.[46] There being no evidence of lease advantage in favor of the lessee, only estimated damages [to the lessee] resulting from increased costs were awarded.[47]

In *State v. Davis*,[48] a trial court was affirmed in awarding "lease termination damage" to assure that the owner received compensation "to the full extent of his loss."[49] Damages were deemed appropriate inasmuch as a building was in the process of construction on the land taken and was under a lease permitting the lessee to purchase the building and land at the end of one year's rental, at cost plus 15 percent. The trial court accepted a calculation consisting of the cost of construction up to the time of taking plus land, as a percentage of the completed cost of construction plus land, such percentage to be applied to one year's rent; in accordance with the lease, 15 percent of the partially completed project cost was to be added to this amount to arrive at total termination damage allowance.[50] This damage allowance was in addition to an award for the market value of the land taken and for the unrecovered construction expenditures of the owner-lessor.[51]

In *City of Baton Rouge v. Tullier*,[52] the city was denied the normal benefits of a long-term lease purchase on the ground that it constituted a "windfall." The circumstances were somewhat unique in that

45. *Id.* at 244-45.
46. *Id.* at 247.
47. *Id.* at 248.
48. 400 So. 2d 926 (La. App. 3d Cir. 1981).
49. *Id.* at 927.
50. *Id.* at 928-29.
51. Some duplication in the total award might seem present if the cost of the building is viewed as the present value of future rentals for the life of the building under the residual method. *See* M. DAKIN & M. KLEIN, EMINENT DOMAIN IN LOUISIANA 213 (1970). The possible duplication would consist in the award of one year's rent as part of the termination damages while also awarding the presumed present value of future rentals for the entire life of the partially completed building in the guise of construction expenditures.
52. 401 So. 2d 422 (La. App. 1st Cir.), *writ denied* 406 So. 2d 605 (La. 1981).

the city was both lessee and expropriator and the premises had been converted to a "special purpose." The provisions in the commercial lease for protection of the parties in the event of expropriation also suffered from vagueness; while title to lessee improvements inured to the lessor at the voluntary termination of the lease, in the event of termination by expropriation, the lease provided for "such *division of the proceeds and awards . . . as shall be just and equitable under the circumstances*," and provided further that "*deprivation* of the Tenant *of the use of such improvements shall, pro tanto, be an item of damage* in determining the amount of condemnation award to which the Tenant is entitled."[53] In the absence of specific guidance in the lease, the normal appraisal procedure in case of termination by expropriation was accepted by the trial court and the lessor was allotted the reversionary interest in the improvements, assuming all renewal options were exercised; the lessee was allotted the present value of the use of the improvements for the maximum lease period.[54] A court of appeals was somehow persuaded that this could result in a "windfall" to the city; it rejected the appraiser's calculations and awarded the city only its construction cost, thus imposing on the city the risks which were the lessor's under the long-term contract. While the interest rate used might be questioned, the approach of the trial court seemed unassailable; rejecting it rather than modifying it could only result in a "windfall" to the lessor.[55]

In general, in takings by the state under the highway "quick-taking statute," the measure of compensation is the market value of the property as of the date the estimated compensation was deposited in the registry of the court.[56] In *State v. Boudreaux*,[57] however, it was noted that the statutory designation of the recipient of the deposit

53. 401 So. 2d at 425 (emphasis in the original).

54. *Id.* at 424-25.

55. Failure to understand the trial court's approach is evidenced by the interpretation given in the opinion. The first circuit stated, "Using this method, the trial court applied a 9% discount rate and figured the present value of the right to receive $4,623,000 in 77 years is $4,623,000 *multiplied by the inward co-efficient [Inwood coefficient] factor* of .0013 which equals $4,616,990.10." [sic] 401 So. 2d at 425 (emphasis added). This calculation yields $6,010, which is the present value of the reversionary interest of the *lessor* at 9% discounted 77 years and what he should receive on these assumptions. The present value of the city's right to use improvements valued at $4,623,000 for 77 years at 9% is $4,616,990 and what it should have received as a credit. The committment to return the improvements in "a good state of repair" is reflected in the appraiser's assumption of a fair market value of $4,623,000 at the time of reversion 77 years hence, but with such market value discounted to present value. An adjustment might have been made in the discount rate if unfairness was thought to result, as was suggested by a concurring judge.

56. LA. R.S. 48:453(A) (Supp. 1974).

57. 401 So. 2d 428 (La. App. 1st Cir. 1981).

must be strictly complied with in order to accomplish vesting of title and a taking setting the valuation date. Thus, where the person named in the petition was not the record owner, he was not the "person entitled thereto," and such a deposit was deemed to have no legal efficacy. The state argued that since the deposit in this case was made "for the use and benefit of the persons entitled thereto," there was substantial compliance with the statute. It was held, however, that the title would vest in the department only upon the making of the deposit for the benefit of the very person entitled thereto; hence taking occurred only after the state had amended its petition designating therein the names of the true owners entitled to the deposit.[58]

In *Southern Natural Gas Co. v. Poland*,[59] a court of appeals rejected an attempt to litigate, in an expropriation proceeding to take property for underground gas storage, the validity of a conservation commissioner's order, an issue properly raised only with the conservation commissioner.[60] The trial court was affirmed in holding public purpose and necessity was established by evidence that peak demands could not always be met by normal production and had to be augmented by gas stored in a reservoir such as that sought to be expropriated.[61] In establishing the market value for an award of just compensation, the property owners argued that storage rights should be valued by determining the cost to replace unrecoverable cushion gas in the reservoir, an approach rejected in *Mid-Louisiana Gas Co. v. Sanchez*;[62] comparable sales of similar storage areas made between knowledgeable parties were deemed admissible measures of values under the circumstances.[63] The requisite of comparability eliminated, as evidence of market value, the sale of a salt dome with many more times B.T.U. storage capacity than the porous-rock reservoir sought to be expropriated.[64] Attorney's fees amounting to more than the excess of awards over offers were deemed an abuse of discretion and reduced to a level more in keeping, by analogy, with the limits provided in the quick-taking statute.[65]

PROCEDURE AND EVIDENCE

In keeping with general practice regulating the creation of subdivisions, Louisiana has made dedication of subdivision streets man-

58. *Id.* at 431.
59. 406 So. 2d 657 (La. App. 2d Cir. 1981).
60. *Id.* at 661.
61. *Id.* at 662.
62. 280 So. 2d 406 (La. App. 4th Cir. 1973).
63. 406 So. 2d at 664-65.
64. *Id.* at 665.
65. LA. R.S. 48:453(E) (Supp. 1974); *cf.* Trunkline Gas Co. v. Rawls, 394 So. 2d 1250 (La. App. 2d Cir. 1981).

datory and has authorized police juries to prescribe the dimensions thereof.[66] The trial court in *Boagni v. State*[67] permitted a police jury to reject dedication of a street duly platted and recorded if the street failed to comply with the prescribed dimensions;[68] perhaps hoping for such an outcome, the subdivider had platted a non-complying street next to the right of way of a proposed interstate highway. In keeping with interstate construction, the adjacent street was to be converted into a service road. As the state did not expropriate it, the subdivider brought a successful action in inverse condemnation to recover the value of the property. The court of appeals was not receptive to this outcome, for the ingenious concatenation of circumstances left the subdivider with title to a street platted and recorded as a dedicated street. While the police jury's authority to regulate was not disputed, dedication was deemed mandatory and could not be disclaimed even though in partial noncompliance with jury regulation; therefore, no compensation should have been awarded.[69]

A landowner, in *State v. Burnett*,[70] sought severance damages for loss of access to his remainder land after a portion had been taken for a "controlled access facility" to an interstate highway to be constructed by the state. Both the petition of the state and its order of expropriation were ambiguous and subject to an interpretation that the land taken was as an "appurtenance" of a controlled access facility and hence supported the landowner's claim that he had suffered loss of access for his remainding land.[71] However, a plat of the proposed improvement, as a part of the state's pleading, enabled it to establish that controlled access ended short of the remainder and hence did not deny access.[72]

The 1974 constitutional provision that a landowner "shall be compensated to the full extent of his loss"[73] was given a troubling interpretation in *City of Lafayette v. Delhomme*.[74] The city offered $175,000 cash for land which was the site of a grocery store operation, with the owner to retain ownership of movables consisting of stock and fixtures and the city to pay moving costs; upon rejection, the city moved to expropriate. Ostensibly guided by the new constitutional

66. LA. R.S. 33:5051 (1950 & Supp. 1962).
67. 399 So. 2d 813 (La. App. 3d Cir. 1981).
68. *Id.* at 816.
69. *Id.* at 817.
70. 411 So. 2d 533 (La. App. 1st Cir. 1982).
71. *Id.* at 535.
72. LA. CODE CIV. P. art. 853 provides: "A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."
73. LA. CONST. art. I, § 4.
74. 401 So. 2d 1044 (La. App. 3d Cir. 1981).

provision, the trial court awarded $178,000 for the land and ordered the city to pay certain business losses, including the cost of moving *and the value of the movables.*[75] Probably for policy reasons, the city did not appeal this award although it obviously more than compensated the owner for his loss, particularly if deterioration of stock were also included in the item "business losses." Without an appeal, the reviewing court was helpless to modify the award; it could, however, affirm the trial court's otherwise unsupported refusal to award attorney's fees as not an abuse of discretion where the pecuniary award included payment for movables *and* a gift of them back to the owner.[76] In these circumstances, the city's cash offer for the land, coupled with the other values stipulated as offered by the city, was deemed to approximate the award; the owner, by refusal of such offer, had precipitated unnecessary litigation, the cost of which he should bear. The court was thus able to avoid, at least respecting attorney's fees, the consequences of what it viewed as a possibly erroneous constitutional interpretation.[77]

Legal costs of expropriation proceedings have been held to come within the constitutional guarantee of just and adequate compensation; a statute departing therefrom by charging costs of unnecessary litigation to the owner hence must be strictly construed.[78] In *Louisiana Resources Co. v. Greene*,[79] an offer of the value of the land taken, without taking into account other items making up the total award to a landowner, was not a tender which should have rendered litigation unnecessary;[80] as a consequence, costs were properly assessed against the expropriator.[81]

Television companies made another modest advance toward public utility status, with power to expropriate property essential to their operations, in *Sanders v. Plaquemines Cable TV, Inc.*[82] The appeals court assumed *arguendo* that such companies possess the right to expropriate servitudes providing they strictly comply with enabling statutes. Thus, a television company was assumed to be within a statute granting power to expropriate to corporations formed for the purpose of transmitting intelligence by telegraph, or telephone, *or*

75. *Id.* at 1046.
76. *Id.* at 1046-47.
77. *Id.* at 1046 n.1.
78. LA. R.S. 19:12 (1950) provides: "If a tender is made of the true value of the property to the owner thereof, before proceeding to a forced expropriation, the costs of the expropriation proceedings shall be paid by the owner."
79. 406 So. 2d 1360 (La. App. 3d Cir. 1981).
80. *Id.* at 1371-72.
81. *Id.* at 1372.
82. 407 So. 2d 524 (La. App. 4th Cir. 1981).

other systems of transmitting intelligence.[83] However, the company had failed to negotiate a servitude for the passage of a guy wire with the current owner of the property, and, since title to the property had changed hands before the encroachment, acquiesence by the old owner was of no avail.[84] With neither good faith negotiations nor acquiesence by the current owner, the company could not bring itself within the statute continuing the St. Julien doctrine, which recognized good faith appropriation with a corollary right in the owner to recover just compensation in inverse condemnation.[85] The company was thus unable to avoid an order against it to remove the encroachments and was left without judicial protection in the determination of just compensation unless a new suit for expropriation was brought.[86]

In *Southern Natural Gas Co. v. Sutton*,[87] the trial court was held in error in making an award in excess of the market value of underground gas-storage property, as established by expert opinion; sales of property presented by the landowner were not comparable merely by virtue of being abutting or adjacent property if not comparable as to subsurface structures. Since there were thus no conflicting admissible comparables to serve as estimates of value, the trial court was in manifest error in departing from expert testimony in making its award.[88]

In *Wilson v. State*,[89] further inroads were made on the holding in *State v. Guidry*,[90] precluding review of the issue of necessity of a taking for highway purposes. In *State v. Jeanerette Lumber & Shingle Co.*,[91] the Louisiana Supreme Court held the issue of whether property was taken for a highway purpose, as distinguished from merely a public purpose, was properly raised by a timely motion to dismiss. In *Wilson*, the court of appeal held that the issue of necessity could be raised in a suit to recover land expropriated, but unused, for highway purposes and that the expropriatee could not be constitutionally precluded therefrom by the ten day limitation on raising the issue of public purposes;[92] the necessity for the extent of the taking

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83. LA. R.S. 45:781 (1950).
84. 407 So. 2d at 527.
85. LA. R.S. 19:14 (Supp. 1976).
86. A similar result was reached in Robco, Inc. v. Consolidated Sewerage District, 400 So. 2d 313 (La. App. 4th Cir. 1981).
87. 406 So. 2d 669 (La. App. 2d Cir. 1981).
88. *Id.* at 672-73.
89. 400 So. 2d 740 (La. App. 4th Cir.), *writ denied* 406 So. 2d 608 (La. 1981).
90. 240 So. 2d 516 (La. 1960).
91. 350 So. 2d 847 (La. 1977).
92. 400 So. 2d at 744.

was deemed not included in the statutory language of "public purpose."[93]

93. The state was also held not precluded by LA. R.S. 48:221 (Supp. 1977 & 1980) from resale, at cost, of property expropriated in excess of need; the statute, providing for resale of "excess area" at cost or current market value, whichever is greater, was held not to apply to excess areas not acquired legally. If "legally" excludes "excess-expropriation," the statute is reduced to coverage of acquisitions by private sale or donations, although "acquisitions" is not so limited in the statute.